

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11318 OF 2014

1. Mangal Bhagwat and 34 Others. ... Petitioners.

V/s.

1. State of Maharashtra and Ors. ... Respondents.

**WITH
CIVIL APPLICATION NO.825 OF 2015
IN
WRIT PETITION NO.11318 OF 2014**

Bhiwandi Nizampur City Municipal Corporation, ... Applicant.
Bhiwandi, Dist. Thane. (Org.Resp.No.2)

In the matter between :

1. Mangal Bhagwat and 34 Others. ... Petitioners.

V/s.

1. State of Maharashtra and Ors. ... Respondents.

Mr.Uday P. Warunjikar, Advocate for the Petitioners in WP
No.11318 of 2014.

Mr.N.R.Bubna, Advocate for Respondent No. 2 in Petition and
Applicant in CAW No.825 of 2015.

Mr.B.V.Samant, AGP for Respondent No. 1.

Mr. D.D.Panpatil, Chief Administrative Officer, Dy. Director of
Health Services, Mumbai Mandal, Thane is present.

**CORAM : S. C. DHARMADHIKARI AND
SMT.BHARATI H. DANGRE, JJ.**

DATE : 05th OCTOBER, 2017

PC :

1 On the earlier occasion, this court was informed that after the civil hospital, which was earlier under the control of Bhiwandi Nuzampur Municipal Corporation, has now been taken over by the State Government, the remaining issues concerning the petitioners would be resolved.

2 On 3rd October, 2017, we had crystallized the points or issues in all five matters. Firstly, we were told that the orders of permanent absorption in respect of the 41 absorbed employees have not been issued. The court was repeatedly assured that such orders would be issued. We, therefore, directed the Government to file affidavit which will demonstrate and prove the compliance of this issue.

3 As far as the first issue is concerned, we are informed by Mr. Samant, learned AGP for the State, that out of

41 absorbed employees, permanent appointment orders of 31 employees have been issued. These were the instructions, which he received a day or two prior. However, further progress is made thereafter and 8 more permanent absorption orders have been issued. Now, only two more orders remain to be issued which the learned AGP, on instructions, states would be positively issued by 31st October, 2017. We accept this statement as an undertaking to this court.

4 The first issue thus got resolved and as far as the second issue is concerned, it has been stated that the service-book could not be completed as the entries prior to 1st October, 2011 in the service books have to be carried out and completed by the Bhiwandi Nizampur City Municipal Corporation, namely, the erstwhile employer. Mr.Bubna, learned counsel appearing for this Corporation, assures the court that the service-books of all these 41 employees would be completed till their date of permanent absorption and would be handed over to the State Government on or before 31st October, 2017. We

direct that if this handing over of service-book is not completed by that date, this court will not hesitate to initiate action in contempt against the concerned officials.

5 Then the issue of arrears of salary on the basis of difference, pursuant to the differential amount, as per the 6th Pay Commission Recommendations was taken up. Meaning thereby, these recommendations have now been accepted and made applicable to even the employees, who served the Municipal Corporation; the amount denoting the difference between the salary fixed prior to the period of these recommendations and thereafter have not been released, Mr. Samant, on instructions, states that the absorption orders date back to 1st October, 2011 and after 01st October, 2011, the amounts as per the said Pay Commission Recommendations, as accepted and made applicable to the State Government employees, have been duly paid or recommended by re-fixing the salaries of 31 (thirty one) employees. This exercise would also be completed as far the balance employees also by 31st

October, 2017. If any employee/staff is not covered, then, after the absorption orders in their case are issued, on absorption, the amount would be released. Mr. Samant states that the liability prior to 31st October, 2011 cannot be thrust or foisted on the State and that is entirely on the Corporation. Mr. Bubna appearing for the Corporation would submit that because of the financial crunch the Corporation had already clarified to the employees that it would not be possible to pay any amount pursuant to this Pay Commission Recommendations. The employees have accepted this version of the Municipal Corporation.

6 On the above statements, we say nothing. We do not think that we should resolve a debatable issue or the controversy noted above. We are only concerned with protection of the services of those employees, who were working at the hospital and which is now taken over by the State. Once we have been ensured that their services are protected then their emoluments and entitlement in relation

thereto based upon their prior services rendered to the Corporation or otherwise are not the matters which can be resolved by this court in its limited jurisdiction. We leave open all such remedies as are available in law for resolution of this dispute.

7 Then remains the issue of amount, lying to the credit of these employees in the provident fund account. The Bhiwandi Nizampur Municipal Corporation does not dispute that the employee's and employer's share in this general provident fund account as a whole has to be transferred. The amounts standing or that the amount reflected in the account of the Municipal Corporation have already been determined, calculated and cheque is drawn in the name of the Accountant General of the State of Maharashtra. The Accountant General's Account has been credited with the same. We direct the Accountant General to verify this position from his record and thereafter, the absorbed employees, who are employees of the State Government, shall be treated as members of this General

Provident Fund, they would derive of benefits in terms of the provident fund scheme of the State, thereafter. Their benefits and contributions shall abide by the provisions of such scheme.

8 In so far as the final issue of seniority list is concerned, it is stated by Mr. Samant, on instructions, that the seniority list in respect of the 30 employees has been prepared and their seniority would be finalized.

9 We are not concerned in this case with the placement of the employees in so far as the seniority list is concerned. All that we are saying is that in the seniority list of the State Government employees, the names of these absorbed employees have been included or not. Mr. Samant states that they have been included and appropriate placement is made. We direct that a copy of such seniority list shall be provided to all these employees as early as possible and within a period of two months from today. Once those lists are

perused by these employees, it is entirely for them to accept their placement or fitment accordingly or dispute the same in appropriate legal proceedings. We keep that aspect open for being decided at appropriate stage in appropriate proceedings.

10 We do not think that any absorbed employee should be denied relief of placement in the seniority. The moment the permanent absorption orders are issued and duly served, the placement shall be made by appropriately modifying or inserting their names in the seniority list. They also should be provided copies of the seniority list accordingly.

11 We have thus taken care of the grievances of the petitioner based upon the undertakings by the concerned authority. Thus, the Government has done, according to the learned AGP, every thing that is possible for it so as to protect the services of these employees. The Municipal Corporation has to co-operate as far as remaining issues and that is why the matter was being adjourned from time to time.

12 After having found that the material placed , including the affidavit of the Government, discloses the compliance made on all the issues framed by us, nothing remains to be done further.

13 We clarify that we have not expressed any opinion on the rival contentions.

14 The Writ petition is disposed of in the above terms. The Civil application in this petition also stands disposed of.

(SMT.BHARATI H.DANGRE,J.) (S.C.DHARMADHIKARI,J.)

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